IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 434 of 1986
WITH
SPECIAL CIVIL APPLICATION NOS. 3288 OF 1991, 271 OF 1992
6950 OF 1992 AND 13027 OF 1993.

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINCHANDRA RASIKLAL MUNSHI &
Versus
STATE OF GUJARAT & ORS

Appearance:
MR PM THAKKAR for Petitioners
Mr. H.C.Patel, Asst. Government Pleader
for Respondent Nos. 1 and 3.
MR. Shailesh Brahmbhatt for Respondent No. 5
MR D.C.Rawal for Respondent No. 8

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/01/2001

ORAL JUDGEMENT

These petitions are connected with each other and hence they are being disposed of by this common judgment.

2. Gujarat Public Service Commission issued an advertisement inviting applications for the post of Assistant Regional Transport Officer on 10.10.82. Pursuant to that advertisement, Gujarat Public Service Commission selected the following persons.

1. Shri Hemavat.
2. Mr. B.T.Vyas
3. Mr. K.M.Patel
4. Mr. J.N.Barewadia

Wait list was also prepared which contained the following candidates.

1. Mr. B.P.Panchal
2. Mr. N.P.Varia
3. Mr. B.P.Munshi
4. Mr. P.I.Sheth
5. Mr. A.A.Munshi

3. Pursuant to the selection, three persons in the select list were appointed on 25.11.85 and 4th person Mr. J.N.Barewadia was appointed on 30.1.86. Different petitions have been therefore filed challenging the said select and wait lists. Special Civil Application no.434 of 1986 was filed by the persons who are in the wait list against the State of Gujarat, Gujarat Public Service Commission and Director of Transport, Shri R.K.Jhala, The Gujarat Motor Vehicles Department Technical Officers Association, Shri N N Manvar, Inspector of Motor Vehicles, R.T.O., Ahmedabad and Shri R.K.Lolaria, Inspector of Motor Vehicles Office of A.R.T.O. at Bhuj. The prayer in that petition is for a direction to the respondents to appoint the petitioners to the post of Assistant Regional Transport Officer as direct recruits in accordance with statutory Rules and to give them all consequential benefits and treat the wait list as legal and valid and in force till all the persons mentioned therein are appointed to the post of Assistant Regional Transport Officers as direct recruits. Another writ petition being Special Civil Application no. 3288 of 1991 has been filed by the persons who are in wait list against the State of Gujarat and Director of Transport with the prayer for setting aside the action for the respondents in making recruitment to the post of

Assistant Regional Transport Officers by way of ad hoc promotions in excess of the quota prescribed by the recruitment Rules as being illegal and null and void and for a declaration that the respondents are bound to make recruitment to the post of Assistant Regional Transport Officers directly in accordance with recruitment Rules and the procedure laid down thereunder and for quashing the action of the respondents in making recruitment to the post of Assistant Regional Transport Officers by way of ad hoc promotion in excess of the quota of promotees notwithstanding the fact that the wait list of the select list prepared for the purpose of direct recruitment to the post of Assistant Regional Transport Officers is still not exhausted and the same is in existence, by appropriate writ, direction or orders by this Court and to restrain the respondents from filling any post of Assistant Regional Transport Officers in breach of the statutory recruitment rules and without operating the select list/wait list prepared for direct recruitment in the year 1985.

4. Another writ petition being Special Civil Application no.271 of 1992 has been filed by Jayeshkumar Vasantlal Shah against State of Gujarat and Director of Transport for a declaration that the proposed action on the part of the respondent authorities to press in service the wait list prepared by Gujarat Public Service Commission is illegal, null and void. Another writ petition being Special Civil Application no. 6950 of 1992 has been filed by one Mangubhai Bhanabhai Halpati against the State of Gujarat and four persons whose names appears in the waiting list with the prayer as made in the earlier petition i.e. Special Civil Application no. 271 of 1992. Another petition being Special Civil Applicationno.13027 of 1993 has been filed by one Dilipbhai Laxmikant Shah against the respondent authorities and the persons who are in the wait list with a prayer for declaring that the wait list which was prepared pursuant to the advertisement dated 10.10.82 and published in the month of October, 1985 cannot be operated for vacancies which have arisen subsequent to October, 1985 and for an injunction restraining the respondent authorities permanently from making any appointment out of wait list prepared pursuant to the advertisement dated 10.10.82 and for a direction that the respondent no.1 Government be directed to release the advertisement for the post of Assistant Regional Transport Officers forthwith.

5. In some of the petitions, affidavits have been exchanged. Heard the learned counsel for the

parties at length. Special Civil Application nos. 434 of 1986 and 3288 of 1991 have been filed by the candidates whose names have been placed in the wait list. One another petition being Special Civil Application no. 2211 of 1986 regarding the same matter was filed by one of the persons named in the wait list and this Court has rendered judgment on 30th July, 1997. This Court has held as under:

> "In the case in hand, even the main list has not been exhausted. There is no question of making any selection from the waiting list as held by the Hon'ble Supreme Court in the aforesaid case for filling up of the future vacancies. The respondents do not want to act upon the waiting list and as such, it cannot be said that there is some extreme exigency with the Government which may as a matter of policy decision to pick up persons in order of merit from the waiting list. None of the legal or fundamental rights of the petitioner have been infringed in the present case. This writ petition is wholly misconceived and the same deserves to be dismissed. Order accordingly."

As such, the prayer on behalf of the persons and candidates mentioned in the waiting list has already been concluded by this Court in the case of Special Civil Application no.2211 of 1986 by an order dated 30.7.97. The wait list persons have no legal vested right nor can they be appointed as source for recruitment. The rights of the petitioners in Special Civil Application no.3288 of 1991 and SCA no. 434 of 1986 are covered and have already been determined and they have no legal right at all. Their petitions therefore, stand dismissed.

6. Special Civil Application nos. 271 of 1992, 6950 of 1992 and 13027 of 1993 have been filed by the petitioners who are outsiders claiming for selection by way of direct recruitment and requested for a direction to the Government to release the advertisement for the vacancies and selection thereof in accordance with law.

7. It has been argued before this Court on behalf of the respondents in these petitions that these petitioners have no locus standi to challenge the selection, they could have challenged only in public interest litigation. It is also stated that the selection has not been done since 1982. There are various vacancies lying vacant in the department. In the

facts and circumstances of the matter in issue, this Court therefore, thinks it proper to direct the State Government to sort out the actual number of vacancies of Assistant Regional Transport Officers with quota for direct recruits and promotees and take necessary steps to fill up the same in accordance with law. With these observations, the petitions mentioned above are disposed of finally. Rule in each petition is discharged with no order as to costs.

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